

TITLE 327 WATER POLLUTION CONTROL BOARD
LSA Document #98-64(F)

DIGEST

Adds 327 IAC 8-3.5, Permit by Rule Development of New Rules Concerning Water Main Extensions. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: May 1, 1997, Indiana Register (20 IR 2213).
Second Notice of Comment Period: January 1, 1998, Indiana Register (21 IR 1506).
Notice of First Hearing: January 1, 1998, Indiana Register (21 IR 1506).
Date of First Hearing: February 11, 1998.
Proposed Rule and Notice of Third Comment Period and Public Hearing: April 1, 1998, Indiana Register (21 IR 2520).
Date of Second Hearing and Final Adoption: May 13, 1998.
Notice of Recall: October 1, 1998, Indiana Register (22 IR 128)
Date of Readoption: October 14, 1998
Effective Date: April 30, 1999

SECTION 1. 327 IAC 8-3.5 IS ADDED TO READ AS FOLLOWS:

Rule 3.5. General Construction Permit for Water Mains

327 IAC 8-3.5-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8
Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 1. In addition to the definitions contained in 327 IAC 8-3-1, the following definitions apply throughout this rule:

- (1) "Alternative technical standard" means alternative technical standards as described in 327 IAC 8-3.2-20.
- (2) "Average daily customer demand" means the average daily customer demand as determined in accordance with 327 IAC 8-3.3-2.
- (3) "Entry point of the distribution system" means one (1) of the following points:
 - (A) For public water systems that utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the distribution system.
 - (B) For public water systems that do not utilize water treatment facilities, the point at which the drinking water has left the supply facilities and has entered the distribution system.
- (4) "General construction permit ban" means a decision issued in conformance with section 8 of this rule.

- (5) "Notice of intent letter" or "NOI" means a written notification indicating a responsible person has elected to comply with the terms of this general construction permit rule in lieu of applying for an individual construction permit.
- (6) "Peaking factor" means the peak daily customer demand factor as determined in accordance with 327 IAC 8-3.3-2.
- (7) "Public water system" means a public water supply for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, including the operator or administrator of such system, and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.
- (8) "Public water system's daily capacity" means the public water system's daily capacity as determined in accordance with 327 IAC 8-3.3-3.
- (9) "Responsible person" means a person as described by section 6 of this rule.
- (10) "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.
- (11) "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.
- (12) "Transmission main" means a pipe described by any of the following:
- (1) That transports water from a surface water intake to a surface water treatment plant;
 - (2) That transports water from a groundwater intake (well) to a water treatment plant (if present);
 - (3) That transports finished water from the treatment plant (if present) to the entry point of the distribution system; or
 - (4) That is installed for the purpose of interconnecting separate public water systems. (*Water Pollution Control Board; 327 IAC 8-3.5-1*)

327 IAC 8-3.5-2 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 2. (a) The following materials are incorporated by reference into this rule, to the extent provided in other sections of this rule:

- (1) The American Water Works Association (AWWA) Standard C700-90.
- (2) The American Water Works Association (AWWA) Standard C701-88.

(3) The American Water Works Association (AWWA) Standard C702-92.
(4) The American Water Works Association (AWWA) Standard C703-96.
(b) The matters incorporated by reference in subsection (a) may be obtained from either of the following:

(1) American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

(2) Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-3.5-2*)

327 IAC 8-3.5-3 Eligibility and exclusions for eligibility

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 3. (a) A responsible person as defined by section 6 of this rule is eligible for a general construction permit.

(b) A responsible person, responsible person's engineer, responsible person's developer, or the proposed public water system that has been issued a general construction permit program ban by the commissioner in accordance with section 8 of this rule is not eligible for a general construction permit.

(c) Proposed water main projects funded in entirety or in part by the Drinking Water State Revolving Fund are not eligible for a general construction permit.

(d) Proposed water main projects to a public water system under a connection ban in accordance with 327 IAC 8-3-4.2 are not eligible for a general construction permit.

(e) Proposed water main projects that meet any of the following criteria are not eligible for a general construction permit as defined by this rule:

(1) The corresponding public water system has a two (2) year average peak that is between ninety percent (90%) and one hundred percent (100%) of the public water system's daily capacity, and the product of the following is equal to or exceeds two percent (2%) of the public water system's daily capacity:

(A) The average daily customer demand of the proposed water main.

(B) The peaking factor of the proposed water main.

(2) The corresponding public water system's two (2) year average peak is equal to or less than ninety percent (90%) of the public water system's daily capacity and the sum of corresponding public water system's two (2) year average peak and the product of the following is equal to or exceeds ninety-two percent (92%) of the public water system's daily capacity:

(A) The average daily customer demand of the proposed water main.

(B) The peaking factor of the proposed water main.

(3) The sum of corresponding public water system's two (2) year average peak and the product of the following is equal to or exceeds one hundred percent (100%) of the public water system's daily capacity:

(A) The average daily customer demand of the proposed water main.

(B) The peaking factor of the proposed water main.

(f) Proposed projects that meet the definition of a transmission main as defined by section 1 of this rule are not eligible for a general construction permit.

(g) An individual construction permit issued under 327 IAC 8-3 is required for all other water main extension construction meeting the criteria of 327 IAC 8-3-2(a) that are not eligible for a general construction permit in accordance with this section or do not meet the general construction permit conditions listed in section 5 of this rule. (*Water Pollution Control Board; 327 IAC 8-3.5-3*)

327 IAC 8-3.5-4 Notice of intent letter

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 4. (a) A responsible person who elects to participate in the General Construction Permit Program shall submit a NOI that complies with this section and is received by the commissioner at least thirty (30) calendar days before the commencement of construction of the proposed water main.

(b) A NOI must be submitted on forms obtained from the commissioner or a computer generated reproduction that is similar in appearance and identical in content to the forms generated by the commissioner.

(c) The NOI must be submitted by certified mail to the address provided on the NOI form.

(d) The NOI must include the following:

(1) The names, firms, addresses, and telephone numbers of the following:

(A) The responsible person.

(B) The responsible person's professional engineer.

(C) The responsible person's developer, resident project representative, or person who by other means is representing the construction aspects of the proposed project.

(2) The title of the proposed project for which the NOI is submitted.

(3) The name of the public water system and the corresponding public water system identification number, mailing address, and telephone number.

(4) The county and nearest public intersection and the nearest quarter section in which the construction project is located or if the section, township, and range are not available, the latitude and longitude of the approximate center of the construction project to the nearest fifteen (15) seconds.

(5) A statement from the responsible person that indicates which one (1) of the following two (2) methods of construction activity notification the responsible person will comply with.

(A) The proposed construction schedule is included with the NOI.

(B) The proposed construction schedule will be submitted separate from the NOI at least ten (10) working days before the commencement of the construction and

- will include a copy of the information required in subdivisions 1 through 4.
- (6) The certifications required in section 7 of this rule.
 - (7) A dated signature from the public water system certifying that the public water system will fulfill the requirements of section 12 of this rule.
 - (8) The average daily customer demand and the peaking factor of the proposed water main;
 - (9) The public water system's:
 - (A) daily capacity.
 - (B) two (2) year average peak.
 - (10) Any fees as required by 327 IAC 8-3-7.
 - (11) A copy of any approvals from the commissioner of alternative technical standards that will apply to the proposed water main.
 - (12) A copy of any approvals from the commissioner of alternate average daily customer demand, peaking factor, or peak daily customer demand that will apply to the proposed water main.
 - (13) A copy of any written authorization of a duly authorized representative of a responsible person. (*Water Pollution Control Board; 327 IAC 8-3.5-4*)

327 IAC 8-3.5-5 General construction permit conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4;
IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18; IC 13-30

Sec. 5. (a) The proposed water main extension must meet the issuance requirements of 327 IAC 8-3-4.

(b) A copy of the NOI, all documentation supporting the project, plans, and specifications must be submitted to the public water system before the commencement of the water main construction.

(c) All documentation supporting the project must be readily accessible for review and copy for the duration of water main construction activities. In addition, a copy of the plans conforming to 327 IAC 8-3.2-5(c) and specifications must be available in accordance with the following:

(A) These items shall be on-site and readily accessible for review and copy throughout the duration of water main construction activities at the site if an office is present at the site; or

(B) If there is no office present at the site, these items shall be producible for review and copy throughout the duration of water main construction activities at the site within sixty (60) minutes upon notification by the commissioner.

(d) Persons in violation of this rule shall take all reasonable steps to correct any adverse impact on the public health resulting from their noncompliance.

(e) Nothing in this rule shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the local, state, or federal laws and regulations.

(f) Responsible persons identified by and regulated by this rule shall ensure that the construction to the public water system achieves compliance with the terms and conditions of this rule.

(g) During construction, where the public water system, responsible person, the responsible person's professional engineer, or the responsible person's developer, resident project representative, or person who by other means is representing the construction aspects of the proposed project becomes aware of a failure to submit any relevant facts, or the submittal of incorrect information in a NOI, the responsible person shall promptly submit such facts or corrected information to the commissioner in writing utilizing certified mail and the address on the NOI form.

(h) The design and construction of the water main must meet all technical standards in 327 IAC 8-3.2 or, if any alternate technical standards are proposed for the project, the alternate technical standard must be approved by the commissioner in accordance with 327 IAC 8-3.2-20, and a copy of this approval must be submitted with the NOI.

(i) All nonresidential service connections must be equipped with a meter, and the size of the meter must be specified on the plans and specification of the water main. The metering devices must not be capable of exceeding the corresponding "Safe Maximum Operating Capacity" as specified on Table 1 of AWWA C700-90, AWWA C701-88, AWWA C702-92, or AWWA C703-96.

(j) At a peak flowrate equal to the peak daily customer demand as determined in subsection (k), the normal operating pressure in the water main shall not be less than twenty (20) pounds per square inch at the ground level at all points in the water main under all conditions of flow when demonstrated in conformance with subsection (l).

(k) For use in this section, the peak flowrate is equal to the sum of subdivision (1) and (2) defined as follows:

(1) The fire flow value that is one (1) of the following:

(A) The fire protection flowrate that is provided by the public water system for the entire water main extension.

(B) Zero (0) if the public water system is not providing fire protection.

(2) The peak daily demand for each of the individual service connections defined as follows:

(A) For residential service connections, the peak daily customer demand is determined in accordance with 327 IAC 8-3.3-2(a)(1), or the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(B) For nonresidential service connections with meter sizes less than one (1) inch in diameter, the peak daily customer demand is equal to fifty (50) gallons per minute.

(C) For nonresidential service connections, the peak daily customer demand is equal to the "Safe Maximum Operating Capacity" flowrate as specified on Table 1 of AWWA C700-90, AWWA C701-88, AWWA C702-92, or AWWA C703-96.

(D) For nonresidential service connections, the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(l) The conformance with subsection (j) must be demonstrated with the use of a computer model or with hydraulic calculations, which must be included with the documentation supporting the project that are to be readily accessible in accordance with subsection (c) and at the public water system in accordance with subsection (b).

(m) Persons in violation of this rule are subject to enforcement and legal action under IC 13-30. (*Water Pollution Control Board; 327 IAC 8-3.5-5*)

327 IAC 8-3.5-6 Responsible person

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 6. (a) A responsible person is described as follows:

(1) For a corporation, a responsible corporate officer. As used in this subsection, "responsible corporate officer" means:

- (A) a president;
- (B) secretary;
- (C) treasurer;
- (D) any vice president of the corporation in charge of a principal business function;
- or
- (E) any other person who performs similar policy or decision making functions for the corporation.

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency or political subdivision thereof, either a principal executive officer or ranking elected official.

(4) For a limited liability company, a registered agent.

(b) A responsible person may be represented by a person in accordance with each of the following:

(1) The authorization is made in writing by a person described under subsection (a).

(2) The authorization specifies either an individual or a position having responsibility for the overall design and construction of the project, such as the position of, project manager, professional engineer, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position).

(3) The written authorization is submitted to the commissioner with the NOI. (*Water Pollution Control Board; 327 IAC 8-3.5-6*)

327 IAC 8-3.5-7 Certification

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 7. (a) The responsible person must sign and date the NOI, making the following certification, "I certify that I have reviewed and understand the applicability and eligibility requirements of this rule and that the water main proposed with the submission of this NOI meets the applicability and eligibility requirements of this rule. I also certify that the design and construction of this project will be performed under my direction or supervision to assure conformance with 327 IAC 8-3.5 and will meet all local rules or laws, regulations and ordinances. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(b) A responsible person's professional engineer who is representing the design aspects of the proposed project must sign and date the NOI, making the following certification, "I certify under penalty of law that the design of this project will be performed under my direction or supervision to assure conformance with 327 IAC 8-3.5 and that the plans and specifications will require the construction of said project to be performed in conformance with this rule. The design of the proposed project will meet all local rules or laws, regulations and ordinances. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A responsible person's developer, resident project representative or person who by other means is representing the construction aspects of the proposed project must sign and date the NOI, making the following certification, "I certify under penalty of law that the construction of this project will be performed under my direction or supervision to assure conformance with 327 IAC 8-3.5. The construction of the proposed project will meet all local rules or laws, regulations and ordinances. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(d) The responsible person representing the public water system for which the water main is proposed must sign and date the NOI, making the following certification, "I certify under penalty of law that I have agree to furnish water to the area in which the water main is proposed. I acknowledge the public water system's responsibility for examining the plans and specifications to determine that the proposed water main meet local rules or laws and ordinances. I also acknowledge the public water system's responsibilities as outlined in 327 IAC 8-3.5-12. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." (*Water Pollution Control Board; 327 IAC 8-3.5-7*)

327 IAC 8-3.5-8 General construction permit program ban

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 4-21.5-3-7; IC 13-11-2; IC 13-15-2; IC 13-18;

Sec. 8. (a) The commissioner may issue a general construction permit program ban to a person or a public water system who has been issued a notice of violation from the commissioner or has entered into an agreed order with the commissioner as the result of noncompliance with

this rule, 327 IAC 8-3, or 327 IAC 8-3.2 within the previous five (5) years of the commissioner's general construction permit ban issuance.

(b) The commissioner shall notify the person or the public water system in writing of such decision to impose a general construction permit program ban by certified mail, return receipt requested.

(c) A NOI received by the commissioner before the effective date of the general construction permit program ban is exempted from the general construction permit program ban.

(d) A person or a public water system aggrieved by the imposition of a general construction permit program ban may appeal the decision of the commissioner at a hearing held in accordance with IC 4-21.5.

(e) A general construction permit program ban may remain effective for a time period established by the commissioner not to exceed five (5) years.

(f) A person or public water system that has been issued a general construction permit program ban may apply for an individual construction permit in accordance with 327 IAC 8-3. (*Water Pollution Control Board; 327 IAC 8-3.5-8*)

327 IAC 8-3.5-9 Effect of general permit rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 9. Compliance with the general construction permit rule does not:

- (1) convey any property rights of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations;
- (3) substitute any duty to obtain other state or local approval or permits required by law for the proposed construction project; or
- (4) construe as guaranteeing that the proposed construction project shall meet standards, limitations or requirements of any agency of state or federal government.

(*Water Pollution Control Board; 327 IAC 8-3.5-9*)

327 IAC 8-3.5-10 Modification, nontransferability, retraction, and expiration

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 10. (a) The information on the NOI may be modified with a written submittal of an amendment to the NOI received by the commissioner at least fifteen calendar (15) days before the commencement of the construction of the water main.

(b) A general construction permit may not be transferred.

(c) If a responsible person chooses not to commence construction of a water main that is the subject of a NOI, the responsible person must notify the commissioner of the decision.

(d) The proposed project for a general construction permit must commence within twelve

(12) months of the submittal of the NOI. The commissioner may extend the duration upon receipt of a written request from the responsible person that states no changes have occurred with the NOI. Such request must be submitted using certified mail to the address on the NOI form and be received by the commissioner within twelve (12) months of the NOI submission. (*Water Pollution Control Board; 327 IAC 8-3.5-10*)

327 IAC 8-3.5-11 Inspection and enforcement

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-14-2-2; IC 13-14-5; IC 13-15-2; IC 13-18

Sec. 11. (a) The commissioner may inspect any site, pursuant to IC 13-14-2-2 and IC 13-14-5, including the public water system, involved in the construction of a project regulated by this rule. The commissioner may take samples or test at any site involved in the construction of a project regulated by this rule.

(b) If the commissioner determines, based on the inspection of the NOI, plans or specifications or the construction of the project, that the project does not comply with the general construction permit rule, the commissioner may do the following:

(1) Require the responsible person to undertake necessary action to achieve compliance with the general construction permit rule.

(2) Notify the responsible person of the commissioner's order of an immediate stop to the commencement or further progression of the construction of the project in the area of the noncompliance.

(3) Notify the responsible person of the commissioner's order of an immediate stop to the commencement or further progression of the construction of the entire project.

(4) Revoke the ability to construct with the general construction permit.

(c) Persons regulated by this rule shall furnish to the commissioner, any information requested by the commissioner to determine compliance with this rule and whether cause exists for revoking approval to construct under this rule. (*Water Pollution Control Board; 327 IAC 8-3.5-11*)

327 IAC 8-3.5-12 Requirements for the public water system

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 12. (a) The public water system must maintain the information contained on each NOI and all documents submitted with each NOI for all water main construction with a general construction permit.

(b) The public water system must maintain the information contained on the plans and specifications for each corresponding NOI for all water main construction with a general construction permit. (*Water Pollution Control Board; 327 IAC 8-3.5-12*)

